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NOMINATION OF LANDO W. ZECH, JR.

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF LANDO W. ZECH, JR., TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

JANUARY 30, 1985

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NOMINATION OF LANDO W. ZECH, JR.

WEDNESDAY, JANUARY 30, 1985

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 406, Dirksen Senate Office Building, Hon. Alan K. Simpson presiding.

Present: Senators Simpson, Chafee, Warner, and Evans.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Good morning. The chairman has been called to a chairman's meeting to discuss—would you guess—the budget and the defense budget and other things of interest to us.

I welcome you all to this hearing on the nomination of Lando Zech to be a member of the Nuclear Regulatory Commission. I do apologize for my tardiness.

We're fighting about the proposed BLM and Forest Service merger, and out in my part of the country that's heavy. They're going to go toward that. They're not going to merger them in a day, but you can imagine what that does.

I have had an opportunity to visit with Commissioner Zech on two separate occasions, and you have held your recess appointment since July 5 of last year and now you have this opportunity to appear formally before the committee. We want to hear your views on the subject of commercial nuclear power and the public health and safety and to question you on those views. I have found you to be a man of great dedication with a "can do" attitude. Your enthusiasm for the job is apparent, and I am pleased that you have been nominated and that you are willing to serve your country in this very difficult role—and indeed it is. I won't belabor the point.

I would just say that the tasks confronting the Commission today and over the next 5 years of your term are formidable and difficult indeed: 91 reactors licensed to operate, more than any country in the world, and the Commission's responsibility is to insure that those reactors operate safely.

I think people lose track of the fact that there are 33 reactors under construction, including some controversial ones, and a large number of those are going to come on during your term. So I trust that considerable progress can be made over the next 5 years toward the selection of a first-of-its-kind site for permanent isolation of high-level nuclear radioactive waste. That's the program in which the NRC will play a very central role.

Then we have other little things to dabble with, like the undamaged Three Mile Island unit and its restart; NRC and EPA struggling and grappling with each other and dabbling in each other's jurisdictional areas; and uranium mill tailings; and the sunshine law which prevents the collegial body from meeting; and licensing reform. You will enjoy it. I know you will. Those are just a handful of the tasks.

Due to the fact that you have been serving as a recess appointment, there are a number of adjudicatory cases now pending before the Commission that you will be considering, and those cases are appealed from lower boards to the Commission.

We have been advised that you may discuss the status of those individual cases with us but may not discuss the contested issues. Accordingly, we have asked a member of the Commission's Office of General Counsel to be present to advise you in the event that questioning gets into the details of those individual cases.

With that, let me recognize my fine colleague from Rhode Island. Senator Chafee, do you have a statement at this time?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Mr. Chairman, I want to welcome Adm. Lando Zech here. I had the privilege of serving with him in the Navy Department, where he had an outstanding record. He rose to be the chief of naval personnel, which is one of the top jobs in the Navy, which determines the future for so many of our young officers and enlisted men, and indeed, those in the higher ranks as well. Every job he's done he's done well.

Furthermore, he had the good judgment to marry a girl from Rhode Island, which obviously indicates he's an intelligent man.

I would just like to comment briefly on what I see as the problem before the Nuclear Regulatory Commission. I have not been too deeply involved with that. That's not a subcommittee that I serve on. I guess we're all happy to leave that to you, Mr. Chairman.

It seems to me that whether one is for or against nuclear power, that the people who are entering into the projects of building the plants are entitled to a decision. It seems to me that the great problem is that they don't know what the regulations are. Millions and, literally billions, of dollars are poured into these projects, and the obstacles never seem to be able to be overcome. I am not blaming your predecessors at all for this, because much of it is local law that they have to comply with, it has nothing to do with the Federal law or the Nuclear Regulatory Commission. But to the greatest extent possible, I would hope we would arrive at definite rules, definite safety criteria, and then stick with them so that those who are investing these moneys—and I know the Senator from Washington has been deeply into this—will know what their costs are going to be and can proceed.

The problem now is that there is no end to this. I personally am not enthusiastic about nuclear power, but nonetheless I think investors who get into this with one set of rules are entitled that those rules be there 7 years later when they're still struggling to build the plant.

Second, the greatest problem that's holding back nuclear power in this country, as far as I am concerned, is the disposal of the waste. We've thrashed around with that up here unsuccessfully, and if you can lend your attention to that I know it will be a big step ahead for the industry, and the Nation as well.

So I want to welcome you here, Admiral, once again and just say that I look back with the greatest enthusiasm and joy on the years that we served together with, of course, Senator Warner, who is in a like situation.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Chafee. I appreciate your being here.

Now our two fine colleagues, one a member of the committee, Senator Evans, one who is not but one who came to the fray when I did, and I recognize Senator Warner of Virginia.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you very much, Mr. Chairman, and my distinguished colleagues, Mr. Chafee and Mr. Evans.

Indeed, I did meet the candidate when I was deputy to Mr. Chafee. In some respects in the Senate I continue to be deputy to Mr. Chafee.

Senator CHAFEE. Well, you haven't recognized it, though.

Senator WARNER. Yes; I have. Also I would like, at this time, to put things in the proper context. In Virginia we refer to them as ladies, and, Mrs. Lando Zech, would you kindly rise to be recognized? Jo and daughter, Carol.

Members of the committee, I wish to bring to your attention that among the honors of this distinguished candidate are two Distinguished Service Medals, two Legion of Merit Awards, and a Navy Commendation Medal. As mentioned, he had a background of 39 years in the U.S. Navy, with nuclear submarines and surface ships, commanding positions throughout the fleet. I think that he would be the first to tell you that in the history of the U.S. Navy nuclear program, there has never been an accident resulting in a losss of life. That is a record that I hope that he can bring to our civilian nuclear program.

I wish you the very best of luck.

[Senator Warner's written statement appears at p. 17.]

Senator SIMPSON. Thank you very much, John. I appreciate your being here and speaking on the Admiral's behalf.

Now, a good colleague who represents the State of Washington, a State that is grappling daily with nuclear issues at almost every level.

It's good to have you here, Dan.

STATEMENT OF HON. DANIEL EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Mr. Chairman, I almost hesitate to recollect that my aquaintanceship with Lando Zech goes back 46 years.

When I arrived as a young freshman at Roosevelt High School in Seattle, WA, I, like most young freshmen, immediately began to

look around, in a very large high school of 2,500 students, for those who were the student leaders, the ones you looked up to as those who from the student body led the school. And as a student government leader, as a student athlete, as a student scholar, Lando Zech excelled in all of these.

I had the privilege of being in the same class as his younger brother, Bob. It was a distinguished family then, and he has had an exceedingly distinguished career, as his record and résumé will show, ever since. Although he was born as an Oregonian, I think we claim him as a Washingtonian during the time he grew and for the period he spent as commandant of the 13th Naval District headquartered in Seattle.

He has an exceedingly distinguished record, and I am confident he will carry out these terribly difficult duties—and they are difficult today—of the Nuclear Regulatory Commission. As the chairman has pointed out, perhaps no State in the Nation has more interest, and sometimes more pain, with the development of nuclear power than the State of Washington. We have a long way to go, and we will be watching with great interest and with exceeding confidence the actions of Lando Zech as a member of the Nuclear Regulatory Commission.

Senator SIMPSON. Thank you very much, Dan.

Thank you, John.

Now, Admiral, we would like to have your statement, sir. It's nice to have you with us this morning.

STATEMENT OF LANDO W. ZECH, JR.

Mr. ZECH. Thank you very much, Mr. Chairman. With your permission, Mr. Chairman, I do have a brief statement that I would like to submit for the record (see p. 23), but if I may just summarize a few remarks orally I would appreciate doing so.

Mr. Chairman, first of all, I would like to thank you for those kind remarks. I would like to thank Senator Chafee and Senator Warner, and Senator Evans, whom I have known for many, many years. The three gentlemen who have very kindly spoken on my behalf I might say I admire greatly and I think our country is fortunate to have them and you, Mr. Chairman, in the positions of leadership in these very important times for our country. So I thank all of you for your kind remarks.

I do appreciate the opportunity of appearing before this distinguished committee as President Reagan's nominee to be a member of the U.S. Nuclear Regulatory Commission. As referred to earlier, I have been serving as a commissioner in a recess appointment since July 5, 1984, and prior to that for 39 years I was privileged to serve my country as a commissioned officer in the U.S. Navy. I retired from the Navy in October 1983.

My primary motivation for accepting this demanding assignment, outside of the great honor, of course, of receiving a Presidential appointment, is the opportunity this presents for me to serve my country. It's my personal judgment that safe nuclear power is an important part of our Nation's energy needs now and in the future. I am dedicated to the national policy objective which is set forth in the Atomic Energy Act of 1954, as amended, and the

Energy Reorganization Act, that the commercial use of nuclear power be pursued with assurance that the public health and safety is protected.

Mr. Chairman, members of the committee, I believe that the key to safe and reliable commercial nuclear energy is trained and dedicated people. People design our nuclear plants. People build them. People operate them. People maintain them. People manage them. People regulate them.

I believe in a businesslike approach, with formality, with discipline, and attention to detail in all aspects of nuclear energy.

As the Nuclear Regulatory Commission interfaces with industry, I see the role of the Nuclear Regulatory Commission as one which should encourage excellence, demand compliance, provide cooperative assistance whenever possible, and exercise prompt, tough enforcement when warranted.

In summary, I do believe that nuclear energy can be provided safely and reliably and that it can make a significant contribution to our energy needs. If confirmed, I look forward to the opportunity to work closely with my colleagues on the Commission and with the Members of the Congress in carrying out the important elements of our national nuclear energy policy. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Admiral. We appreciate that.

I have several questions, and there may be others presented to you in writing by members of the committee who are unable to attend. Senator Mitchell and Senator Bentsen have indicated conflicts and they will be unable to attend the hearing. We will place their statements in the record and perhaps questions from others on the full committee.

As I say, our chairman greatly regretted he could not be here to chair this meeting due to a conflict with chairmanship duty.

You have now served for about 7 months with the NRC.

Mr. ZECH. Yes, sir.

Senator SIMPSON. I trust you have gained some insight into the way in which that agency functions and the issues confronting the Commission. Based upon that brief experience, what do you see as the principal changes, if any, that need to be made in the way in which nuclear power is regulated by the Commission, and what do you see as the major priorities over the next 5 years.

Mr. ZECH. I believe that our first priority should be the assurance of the safe operation of our current nuclear plants, those that are operating. I also believe that we should at the same time give high priority to those nuclear plants that are under construction. I look at that as a short-range priority, but it's a very important priority for our Commission to assure the safe operation of the plants we have and those coming along.

The second, and longer-range, objective in my view—and a very, very significant objective which entails many other issues that also are significant—is the move toward standardization. In my experience so far on the Commission I have visited a number of commercial nuclear powerplants. I believe it's 15 different sites I have visited. I have talked with management; I have talked with the operators. I have inspected the plants. It gives me a firsthand feel for

how the plant has been constructed, how it's managed, attention to detail, the formality of discipline, which is so important in my view in this complex industry.

So my experience in visiting the plants as well as here in Washington at Commission meetings has led me to believe that for the future it is very important that we standardize our plants. We have 55 different utilities involved now in nuclear power, commercial nuclear power. We have at least four major vendors and at least a dozen architect/engineers. When you put that combination together, we've ended up with a great number of nuclear plants that are different. That makes it difficult to manage, to regulate, to operate.

If we go toward standardization, we will bring discipline, more discipline, to the whole industry in several ways which I will just articulate very briefly.

First of all, we would bring discipline to the design. We'd bring discipline to the operation of our plants. We'd bring discipline to the training which is required. We'd bring discipline to the maintenance. We'd bring discipline to regulations.

There are many who say we have too many regulations now. And we probably do, but it's been my experience so far to note that many of our regulations are called for because we have so many different kinds of nuclear powerplants.

I think standardization would focus our research, for example. It would focus our scientific and engineering expertise on areas that would have great benefits. And I envision a standardization program that would give us a plant that we could consider meeting all the criteria for safety for a period of up to 10 years perhaps. That doesn't mean that good ideas and new areas of safety involvement wouldn't come about, but it would mean that we would consider the plant as a safe nuclear plant that we could build. And it would give the stability that Senator Chafee mentioned earlier to the whole system: to the financial system as well as the design system as well as the construction system as well as the operations system.

Stability is necessary, but it would also then bring to the next generation of plants the new ideas that could make significant improvement.

So, in summary, then, I think, Mr. Chairman, short range we should concentrate on safety of our operating and construction plans, and long range we should concentrate on standardization.

Senator SIMPSON. Could you please describe briefly what your view is as to the appropriate relationship of the Commission to the executive branch and to the Congress on nuclear regulatory matters?

Mr. ZECH. In my view, the Nuclear Regulatory Commission is an independent agency. Its Commissioners are appointed by the President and confirmed by the Senate. We have committees in the House that have oversight responsibilities over our agency, as well as this committee of the Senate. I view the relationship as one where we do work with branches of the executive branch; for example, the Department of Energy. We work with the Environmental Protection Agency; we work with FEMA, the Federal Emergency Management Agency, and other organizations, Department of Transportation.

So we do work with the executive branch in a technical assistance review sort of process on nearly a daily basis. We work with the State Department, as you know, in certain areas.

With the Congress, Congress has what I would term "oversight responsibilities" over our agency. We submit our authorization, our budget plans to Congress. We should, in my view, be interfacing with Congress to the point where the Members of Congress are confident and aware of our objectives, our goals, how we're proceeding. I think we should have a close relationship with Congress, as representatives of the American people. Therefore, I do feel that working both with the executive branch and with Congress is a very, very important part of our mission.

Senator SIMPSON. You do mention the oversight capacity, and this committee, under the chairmanship of Senator Stafford, is the sole committee with oversight jurisdiction over the NRC. Would you agree to appear before this full committee and its subcommittees when required to do so?

Mr. ZECH. I would be pleased to appear, Mr. Chairman, at any time.

Senator SIMPSON. I think perhaps Senator Chafee may have a question. I don't want to take the full time. I can come back to my remaining questions.

Senator CHAFEE. Yes, Mr. Chairman. I have an appointment at 10:30. I am a little late now, so I will have to go to that.

But I just wanted to follow up with what Admiral Zech said in connection with the standardization. I agree with that in theory. Probably achieving it is more difficult. In other words, if you've got Combustion Engineering doing one design and Brown and Root doing another and Bechtel doing another, each one, I presume, thinks that its design is the best. And therefore, how to choose?

I personally have not understood. It seems to me if I were building a nuclear powerplant, to get around all the problems I would choose something that had already been approved by the NRC and the local regulatory agencies and then go with that and say, "They've approved it before, so"—and then I would get my plant built.

But I suppose the problem of going to standardization—the plus is all the ones you mentioned—the downside of it is how do you keep up advances in the industry for greater efficiency and indeed perhaps greater safety if you're sticking with some off-the-shelf design that Combustion Engineering and 4 years ago or 5 years ago?

Mr. ZECH. The move toward standardization, because of the way we've been operating for so many years in the commercial nuclear energy field, would not be an easy one. It would be difficult. And you're absolutely right, Senator Chafee, when you mention that other architect engineers and vendors would not necessarily be all ecstatic with the idea of going to a standardized plant because of the possibility that they would not perhaps get selected to do the building and constructing that they would hope to be selected for.

On the other hand—so it would come with considerable difficulty on the part of industry. I don't believe there's any question about that. But I think the safety that would be involved and the other advantages that come from standardization which I have articulat-

ed previously would be so powerful and so overwhelming that it would make so much sense to everyone, that I really do think that the architect engineers involved would and could get together themselves to try to work out a program where they could all complete for the design that might be selected and work out some of the more competitive details in a manner that would be at least reasonably satisfactory to them from a competitive standpoint.

I think the great need for standardization should really be the driving point, and I think our Navy programs, as you know, were generally standardized. We did have plants that would go in one submarine after another for many, many years. So it can be done, but there is difficulty in doing it, there's no question about that.

I think from a competitive standpoint, difficulties would arise. But I think that the importance of it is such that it demands an earnest effort towards standardization.

Senator CHAFEE. I wonder if we get into antitrust laws if you impose too much standardization. I don't know.

Well, there are pluses and minuses, obviously, on both sides. But it seems to me that the industry is just stalemated there now because of all the problems that have come up, plus, of course, the cost factor and the decline in the growth of the need for electricity, apparently. But I think what you're outlining makes a lot of sense. Now, there are probably views on the other side that we haven't thought of.

Well, anyway, I have to go, but I did want to again say how much we appreciate your being willing to undertake these duties. Here you were, comfortably retired as a vice admiral with your family and letting the world go by peacefully, just reporting to old reunions once in a while, and now you've stepped into this maelstrom. We wish you the best of luck, and we stand here in this committee not as an adversary, but to be helpful with your problems. And I hope you will come to us when you think you've got difficulties where you think we might be able to be of help. Thank you very much.

Mr. ZECH. Thank you very much, Senator.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, John.

Senator Evans, did you have any particular questions you wanted to address?

Senator EVANS. Mr. Chairman, yes, I guess in my relationships with the Nuclear Regulatory Commission, primarily as chairman of the Pacific Northwest Regional Power Council over the last several years before coming to the Senate, and even since, I have been really puzzled by the apparent requirements which seem to create a barrier between the Commission itself and the technical staff which supports it. I know some of the rationale, which is apparently legal in nature.

But it seems to me—and I notice in some of your background material you have attempted to get at that problem—I fail to see how a nuclear regulatory body can effectively carry out its responsibilities if it's continually required to separate itself from its staff and isn't allowed to really join together and meet together in order to come to some policy conclusions.

Do you have any comments on both those areas, the Commission acting as a commission and the relationship between the staff and the Commission; and perhaps, if you see some problems, any suggestions as to how they might be eased?

Mr. ZECH. Yes; the Commission, as it stands now with five commissioners, as you know, Senator, does operate as a collegial body. I have done my best to try to be collegial and get to know my fellow Commissioners and to work with them. It's been important, I think, at least for me to try to do this. My own background has been generally used as a focal point for responsibility, authority, and accountability. And so it's hard for me, in an organization where, frankly, we're trying to lead by committee. So it has been something that I have worked on to try to contribute as much as I can in this rather different environment for me.

As far as the staff relationship is concerned, in the ex parte provision which you're referring to, there are problems with that. My view—and I have studied this and worked in it and thought about it for the past 6½ or almost 7 months now—there are changes, I think, that perhaps we in the Commission can make ourselves to make the ex parte provision less restrictive.

But those changes are hard to come by. My fellow commissioners have different views, and I think they're thoughtful views. But I do think that there are ways that we can, within the present statute, perhaps define our own ex parte regulations in order to function with a closer relationship between the staff and the Commission.

But there's no question but that's a very—it's a very difficult provision. It makes it difficult because there are certain issues—for example, the best example I can give, I think, is for the issues that are in contention, that we can only speak to our staff by going through a public process that is time-consuming at best, and awkward. And that provision does make it difficult. I am used to the staff working, you know, for the boss, and it's hard for me, frankly, not only to have five bosses, but a staff that has restrictions on its giving you advice.

So I think, first of all, we should try within the Commission to see if we can't come up with better rules that will allow us to operate at least in a more satisfactory manner. If we can't do that, we may have to come to the Congress and ask for legislative relief. We simply must be able to, in my judgment, use our staff in a more efficient, effective, and prompt manner than we're doing now. I think it's up to us on the Commission first of all to try see if we have exhausted every means possible before we come to the Congress. We're doing that now.

Senator EVANS. Well, I, as one Senator, would be very interested if that only takes you partway and you feel the need for revision. I am also very much aware of the controversy that might erupt. But nonetheless, it seems to me that in the intense desire to ensure that everything is laid out publicly, we have crippled ourselves in terms of delay.

If there is any one major change that seems to me is necessary to rehabilitate the nuclear option for domestic power, it's to reduce the risk of time. I know we've talked about that earlier, and in the analysis we did in the Pacific Northwest about the costs of future power, it was very difficult to asssume that the lifetime cost of a

coal plant was any more or less expensive than the lifetime cost of a nuclear plant. They were pretty much the same—except for one thing, and that was the additional 4 to 5 years in the time required from initial decision until final completion of a nuclear plant as compared with a coal plant.

I would hope that in this, as well as in other areas where you feel, as your experience dictates, we can begin to cut that time period while at the same time maintaining the adequate regulation of safety which is paramount. That could do more than anything else I know.

Mr. ZECH. I think, Senator, that we can do that. That should be one of our highest priorities. I envision that being able to come about to a very large extent as we move toward standardization. And that would be part of my effort.

I think that standardization should not just necessarily be all standardized plants, but it should result in a shorter time to build a plant, a more effective way to monitor them during the construction phase. It certainly should have significant bearing, it would be my judgment, anyway, on reduced costs because the time would be cut down. Many benefits, I think, should come from that. Certainly, a significant one would be reduced time to build the plants, and I think at the same time to build them safely with public involvement at the appropriate times to give the public assurance of safety.

But those are things that I envision as part of the next step, the standardization step, which I think is so important.

Senator EVANS. Well, I know in the painful experience we've had in the Northwest with the Washington Public Power Supply System and the difficulties they have run into, a lot of fingers were pointed at bad management and a lot of other things, and perhaps there is some truth to some of the charges. But I would be willing to bet that at some time in the future when someone writes a history or a doctoral thesis on that set of nuclear problems, they will find that the biggest single cost, the one thing that drove them over the edge, was the successive delays in moving ahead on getting final approval and then construction, coupled with the simply unfortunate circumstance of those delays pushing them into that period of very, very rapidly growing interest rates, and the combination was enough to kill them and kill nuclear powerplants in a good many other parts of the country.

So I can't think of anything that would be a greater contribution than to find a way to bring that 14 to 15 years down to something closer to 8 or 9, which I think could really be done.

Mr. ZECH. I think we should even do better than that. I think we can do better than that. And what we're talking about, I think, is predictability of regulation as well as construction, and a stability that we can kind of count on as we go through there.

It seems to me that those are very important objectives that we should have in mind as we move into the future. And you're absolutely right, those are the very issues that I think are discouraging, perhaps, those who might be in a position to build more nuclear plants right now.

We simply must look at these matters—stability, predictability, and other matters, too—that can not only allow us to build our

plants faster, but to make them safer at the same time, and to make the whole process more predictable and give the confidence not only of the builders, the investors, of but the American people, that this is a professional and solid, disciplined way to bring energy to our citizens. I think it can be done, I truly do. That is, frankly, one of the reasons I am here, because I really do believe that our country needs the nuclear option open. I have confidence that plants can be operated safely.

It's a complex industry, though; it should not be treated other than with great discipline. It does demand a lot of us. It's an unforgiving environment in many ways. But if we treat it professionally with attention to detail and a real seriousness about our business, I think we can not only make great improvements in this area, but I think we will be doing even more by providing the electrical needs that our country, in my view, needs and will need in the future.

Senator EVANS. Thank you, Mr. Chairman.

Senator SIMPSON. I appreciate that, Dan.

Senator Evans brings to this committee, as he brings to every part of his presence here, the ability to get to the nub of things. I hope indeed when the committee restructuring and the assignments are completed, that you will remain here. We need your good offices, indeed, very much.

And you have pinpointed something which to me is an ever-growing concern, and that is, the aspects of this being a collegial body, whatever that is, because it is not a collegial body. It's a body that has a double layering of legal talent—and it is talent, but it's still a double layering. You have a situation where I think we're going to have to look at perhaps a single administrator—that's my view—for no other reason than I think that the image of the American people is that these five people actually sit down and talk about public health and safety and reform, and they can't. They can't sit down and have a cup of coffee in a room, the five of them. It's true. It is funny, but it ain't funny.

The American people have to know this, that these five people, these collegial people cannot sit down in a room and discuss, whether in their offices or their home, without staff, without violating the sunshine law.

Now, either something is wrong, obviously wrong, with the sunshine in Government law to prevent that, and if in the maelstrom of toying with that piece of legislation we're unable to do something, then we'd best go to the single administrator.

My hunch is we're smarter than that, and we'll do something with the sunshine laws that allow people to meet and respond and discuss things so that they can make intelligent decisions on issues.

I think that is the most disturbing. You describe it as awkward. I describe it as unworkable. And so I am going to prepare legislation to at least hope to correct that and go forward with it, because if another situation happened with regard to Three Mile Island—and I was here for the first one as the ranking member of this subcommittee—if some transient like that happened again, the Commission would look grotesque in the process under the fire of publicity that would come as all of us in this committee and in the Senate would be asking the serious questions, "What did you do when you knew 6 months ago that this," and somebody will say, "We tried to

write a letter on that, but we couldn't write a letter because that wouldn't pass the sunshine law test."

This Commission can't write a letter without passing the test. They can't circulate it. They can't get it styled. They can't get it written in English. You have probed the underbelly of a very serious situation which would be very embarrassing to five people who try to do what they can and are frozen in place.

Enough of that. But you're right on target, as usual.

Let me ask you a couple of other questions. The NRC was reorganized in 1980 to supposedly strengthen the management of the agency and to improve safety in all of the agency's activities. Are there any additional changes, in your judgment, which would contribute to greater efficiency and a more effectively managed agency? I realize you, as a newer member, that these are tough questions, because I know you do enjoy your colleagues, and I am not trying to lead you into something that would cause an abrasive relationship with them.

Mr. ZECH. I do believe that the Reorganization Act of 1980 did bring some improvements to our organization. Very briefly, and most importantly, I believe, it gave the chairman at least in times of emergency the role of director of the staff, if you will, such that he could exercise his decisionmaking powers appropriately.

It also gave the executive director for operations, who is the leader of the staff, access directly to the chairman, which I believe has been an improvement for the previous organization.

However, you're absolutely right, Mr. Chairman, when you say that there are other things that could take place organizationally. I am really not in a very good position at the moment to give you my final thoughts because I haven't really come up with them yet. But I have looked at several different things on the staff that I think should be looked at very carefully.

In my relatively short tenure, it seems to me that it's very difficult for me to realize why we have two different law offices, for example. We have a law office for the staff and a law office for the Commission. I understand that because of some of the things that we've discussed earlier—the ex parte rule—does make it sensible to have the organization that we have now in certain ways.

However, it seems to me that there are fundamental changes involved here that really you should have one legal supporting group for the staff and the Commission. And I think that that's something that should be looked at very carefully. And perhaps we would need legislative relief if we couldn't resolve the ex parte problem that enters into that separation of those two staffs so heavily.

Other areas on the staff that I think that some reorganization might be appropriate, we have two offices of inspectors. One is an inspector and auditor office, and the other is an office of inspection—office of investigations, I should say. Separately, both reporting to the Commission. It seems to me that those are areas that we also at least should look at very carefully to see if they couldn't be combined in some way or at least further integrated.

Perhaps one of the most important provisions that we need to do—and maybe of overriding importance to the Commission—would be to consolidate our offices. As I think you know, Mr. Chair-

man, we're in 11 different offices in town, 1 downtown office and 10 of them in the Bethesda area. It's very awkward and very time consuming and does indeed make a split between the staff and the Commission, the staff generally in Bethesda and the Commission downtown.

So it's very awkward and almost makes organizational things pale by the significance of the difficulty that being so dislocated brings about. So I can't help but think that many of our organizational problems would almost be solved automatically, and certainly with great ease, if there were some way or another we could consolidate our headquarters so that we have much better access to our staff and much better physical as well as businesslike way of interfacing with each other.

So consolidation is so overriding that to me some of the organizational things are done because of the separation. So if we could consolidate, I think we would take a giant step toward solving many of our organizational problems.

Senator SIMPSON. Admiral, this committee, of course, does have dual jurisdiction. We have it over the EPA, and we have it over the NRC. Both agencies, of course, are assigned various responsibilities in the regulation of various aspects of the nuclear industry. Let me ask you, in your observation in these joint NRC–EPA relationships, is that functioning effectively with those joint relationships, in your judgment, or are there changes that we could make there to improve that process?

Mr. ZECH. I think that they're functioning, Mr. Chairman. I think you're aware that in some recent issues we at the NRC and EPA have attempted to work out areas of what some would say are mutual responsibilities.

I think it's very important as far as the Nuclear Regulatory Commission is concerned that we be mindful of and responsible for the responsibilities that we have and the expertise that we have. We do have a unique expertise. And I might say that on our staff, which is sometimes criticized by folks who really don't, in my view, understand their really grave responsibilities, we do have very dedicated staff, a very competent group of people, real professionals. Expertise is there in place.

So we do have, I think, a very important contribution to make to the EPA in our area of nuclear safety matters. I think that we recently have been able to work together and accommodate each other's responsibilities. Our staffs are working together closely. I think it's something that we must be mindful of, though, because we do cross each other's territory occasionally, and I think it's something that we're going to continually be mindful of and working toward.

But we have a unique contribution in our area to make, I think, and I think that the EPA is mindful of that. And certainly if I feel that there is any reason that they're not mindful of it, I would make every effort to do what I thought was appropriate.

Senator SIMPSON. Well, you indeed give every appearance of being alert to that conflict and are assisting in resolving it when it gets into just simply turf scraps in that area which don't really have anything to do with the decision process that must be made.

Just a couple of more questions from me. Over just 2 years ago we passed the Nuclear Waste Policy Act of 1982. And here we dealt first with high-level waste. And of course, the reaction in the various States under the initial selection has been predictable, spirited and heavy. And always, when we deal with the tough ones, everybody wants to do something about high-level waste but nobody wants it. And so we come to that. And there will be some tough water ahead as we implement that law.

What priority do you assign to the Commission's responsibilities under that High-level Waste Management Act? Are you comfortable that the Commission has sufficient resources to meet those responsibilities, as you see it?

Mr. ZECH. First of all, I think that we do have a very important contribution to make and a very high priority—I would assign a very high priority to our role in high-level waste matters. Again we do have the expertise. We are interfacing on a constant basis with other agencies of the government involved in high-level waste matters, specifically with the Department of Energy, also with other elements of our country—the States and with the public.

It's important, I think, that all agencies and all parties be heard from and listened to very carefully in this very important area. So it is a very important priority, as far as I am concerned, and certainly one that is of the utmost importance to the nuclear industry.

I think that the high-level waste program and the budget matters that you referred to were, "And do we have enough now?" I think that certainly from our position we are giving the priority in every way to insuring that we do have the resources necessary to pursue our responsibilities. I think it's something, though, that in the budget process that's going on right now, that we and others should be very mindful of because we simply need to insure that we have resources of all kinds to pursue the high-level waste matter in the priority which I believe we should.

Senator SIMPSON. One final question. As we proceed on with the implementation of the Low Level Radioactive Waste Policy Act, we've held hearings in the subcommittee, of course, and we have now the development of the various regional compacts under that legislation. The Judiciary Committee works on that with us, and we're going to move forward with that again. Numerous States are now considering these low-level waste disposal sites and where they should be located.

This, of course, has raised valid questions by local citizens in these areas about the safety of those facilities with regard to surface, population, groundwater, those things.

What steps will you be taking as a member of the Commission to insure that local citizens have every opportunity to be heard as these sites are developed and that the sites are constructed and operated and maintained in a fashion that does meet the total mission, and the sole mission, of the Nuclear Regulatory Commission, which is to protect the public health and safety?

Mr. ZECH. The low-level waste projects that are going on now, as you have mentioned, Mr. Chairman, are generally being handled at the State level. We at the NRC have responsibilities for making sure that those sites do indeed meet our requirements.

For those States, for example—many States have agreements with us to handle those matters; there are some States who do not have, that we have not negotiated a memorandum of understanding or an agreement—for those States that do not have such an agreement, then we have a slightly different procedure whereby we are involved directly in licensing those facilities in those nonagreement States.

I think as far as the public participation is concerned, certainly there is every intention of involving the public. And if I am not mistaken, I believe our procedures and regulations require that the public be involved in our processes of reviewing and licensing these low-level waste disposal sites.

So I am confident that the State and the public will be, and should very properly be, involved in these decisions. The low-level waste matter is one that requires, in my view, a great deal of attention, not only by the States but by the NRC. And I think that interface, as far as I can understand so far, is proceeding very well. But I can only assure you that my personal intention would be to insure that the public does participate and is allowed to participate. And I am again almost certain that our regulations not only provide for it, but provide for it in just about every step in the process.

Senator SIMPSON. I agree. And I think they do, but I think there is a necessity to have more of an educational and an instructional and an informational mission to those local communities—I deeply feel that—and discuss with them as they grapple with the word "nuclear," which is where it all gets distorted—that we are talking about low-level waste, and define to them perhaps the difference between high-level and transuranic and low-level and the various things that mean something to the bright citizens who are very, very concerned.

So I think that's what I hope I will see you doing. Do you agree that that's important?

Mr. ZECH. Yes, sir, I do. I think that the education in all of the nuclear area is so important, not only low-level waste, but high-level waste and the whole nuclear energy, commercial energy. And I would certainly agree that education of our public and the freedom, the knowledge of our public is so important.

My feeling again is that I have great confidence that the American people, when properly informed, will respond in a manner that would be predictable. But I do think that knowledge—and fear of nuclear, Mr. Chairman, as we all know, must be something that has to be in our attention and others in our country in positions of leadership, because I think that nuclear power in all of its aspects can be handled safely. But again, it's a complex business and the more that we can inform the public, I think the more understanding there will be and the best off we will all be.

Senator SIMPSON. I thank you very much.

Dan, do you have any further questions?

Senator EVANS. No; thank you, Mr. Chairman.

Senator SIMPSON. Let me thank you very much, Admiral, for being here. There will be other questions, more detailed questions submitted in writing. I don't know if we have a deadline on return of those responses. But I will share that with you. I don't think

that's quite as critical as it would be ordinarily, but I will let you know.

Mr. ZECH. Thank you.

Senator SIMPSON. Thank you, Mrs. Zech. it's nice to have you here, and Carol, to have members of your family here. We appreciate your presence.

I thank the staff for arranging this so that we could take you, hopefully, from this interim status to permanent status. You are very impressive and very sincere and obviously ready to work, and have been working. I think you are and will continue to be a very fine commissioner.

Mr. ZECH. Thank you, sir.

Senator SIMPSON. I thank you very much.

That concludes this hearing.

[Whereupon, at 11:11 p.m., the committee adjourned.]

[Statements submitted for the record, and Admiral Zech's résumé and responses to written questions follow:]

REMARKS OF SENATOR JOHN WARNER
INTRODUCING LANDO W. ZECH, JR. COMMISSIONER
DESIGNEE, U. S. NUCLEAR REGULATORY COMMISSION
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
JANUARY 30, 1985
10:00 A.M. - SD-406

MR. CHAIRMAN, MEMBERS OF THE ENVIROMENT AND PUBLIC WORKS COMMITTEE:

IT IS A PLEASURE TO APPEAR BEFORE THE COMMITTEE TODAY AND HAVE AN OPPORTUNITY TO INTRODUCE A MAN WITH WHOM I WAS PRIVILEGED TO SERVE WHILE I WAS SECRETARY OF THE NAVY.

ADMIRAL LANDO ZECH, WHO HAS BEEN NOMINATED FOR THE POSITION OF COMMISSIONER OF THE NUCLEAR REGULATORY COMMISSION, WILL BRING TO THIS OFFICE A NAVAL CAREER MARKED BY 39 YEARS OF DISTINQUISHED SERVICE.

AMONG HIS HONORS ARE TWO DISTINGUISHED SERVICE MEDALS, TWO LEGION OF MERIT AWARDS AND THE NAVY COMMENDATION MEDAL.

DURING MY TENURE AS SECRETARY OF THE NAVY, I WAS PROUD TO HAVE THE BENEFIT OF HIS DIVERSE EXPERIENCE IN THE OFFICE OF PROGRAM APPRAISAL, AND LATER AS DEPUTY CHIEF OF LEGISLATIVE AFFAIRS AND DEPUTY COMMANDER OF THE NAVY RECRUITING COMMAND.

ADMIRAL ZECH'S BACKGROUND WITH NUCLEAR SUBMARINES AND SURFACE SHIPS IN COMMANDING THE NUCLEAR SUBMARINE USS NAUTILUS, THE FLEET BALLISTIC MISSILE NUCLEAR SUBMARINE USS JOHN ADAMS AND THE GUIDED MISSILE CRUISER USS SPRINGFIELD WILL BRING A FIRST-HAND KNOWLEDGE OF THE COMPLEXITIES OF NUCLEAR ENERGY TO THE NRC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS AN HONOR FOR ME TO COMMEND FOR YOUR FAVORABLE CONSIDERATION LANDO ZECH AS COMMISSIONER OF THE NUCLEAR REGULATORY COMMISSION.

I AM CONFIDENT THAT MR. ZECH'S SERVICE WILL BE MARKED BY THE SAME ENTHUSIASM AND DISTINCTION THAT WERE THE HALLMARKS OF HIS NAVAL CAREER.

I URGE HIS SPEEDY CONFIRMATION.

STATEMENT
SENATOR GEORGE J. MITCHELL
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
JANUARY 30, 1985

I am sorry that I am unable to join the Chairman and other members of the Committee in welcoming Commissioner Zech to this morning's hearing. The Committee most years holds confirmation hearings on a prospective commissioner for the Nuclear Regulatory Commission, so in that regard, this hearing is not extraordinary. But in another regard, this nomination and these hearings are a significant departure from normal proceedings.

Commissioner Zech was first nominated last year for a five-year term on the Commission to fill a vacancy created by the departure of Victor Gilinsky. Before this Committee could proceed on that nomination, however, Admiral Zech was appointed by President Reagan to the position during the July Fourth Congressional recess pursuant to Article II of the Constitution. Under the terms of this appointment Admiral Zech is entitled to serve until the end of this session of the 99th Congress. If confirmed by the entire Senate, Admiral Zech will serve out the full five-year term on the Commission, until June 30, 1989.

Confirmation hearings provide the Senate, and the appropriate authorizing committee, an opportunity to question any appointee, on the record, about that person's views on the agency, board, commission, or department to which the person has been appointed. It enables the Senate and the Committee to develop a sense of the individual's qualifications and fitness for the position. The confirmation hearing allows the candidate to hear clearly the Committee's concerns and priorities for the position to which the candidate has been nominated.

In the great majority of cases, that exchange of views, those expressions of purpose and priority, that sense of concern are prospective in nature. What challenges or problems faces the candidate when he or she takes office. In Admiral Zech's case, however, he has been a Commissioner for six months. He has already made many decisions affecting the conduct of the NRC's regulatory and investigatory activities. He has participated in Commission proceedings, he has voted, he has created a record of action that this Committee can and should utilize in its determination of Admiral Zech's suitability to be a member of the Nuclear Regulatory Commission. To a great extent, it is that record which I intend to pursue with Admiral Zech in the written questions I will submit following this morning's hearings.

I look forward to reviewing the responses of Admiral Zech. I am hopeful that his responses at this morning's hearing and to the written questions will provide a clear record upon which the Senate can make a reasoned judgement on Admiral Zech's qualifications and fitness to be member of the Nuclear Regulatory Commission.

Jan. 30,1985

Senator Lloyd Bentsen

Committee on Environment and Public Works

Commissioner Zech, I welcome you to this hearing to consider your nomination to the Nuclear Regulatory Commission.

I assure you that this Committee is mindful of the many critical issues which come before the NRC for resolution, just as we are well aware of the complexity and national implications of decisions relating to nuclear power.

Over the past six months as you have served as a recess appointee, I am sure that you have had ample opportunities to appreciate the breadth and seriousness of your responsibilities on the Commission.

The paramount goal of the Commission's activities as mandated by the Atomic Energy Act is to ensure that this country's nuclear power plants are operated safely. I believe this can be achieved so that we and future generations can enjoy the full potential of this science.

However, Mr. Commissioner, I assure you that without public confidence in this highly important and complex field of endeavor, the future of nuclear energy in this country would be at best questionable.

While "deregulation" is a rallying cry heard ever more frequently in Washington and around this nation, there are limits to its application. Safety cannot be compromised even in the face of staggering costs of nuclear power plants. Costs must be considered, but they cannot be allowed to direct the course of our efforts toward safety.

None of us--the nuclear power industry in particular--can afford another Three Mile Island accident. Only by sustaining outstanding safety records will public and investor confidence be ensured.

The intense public scrutiny and interest makes it imperative that we demonstrate that the NRC and the industry do in fact consider the health and safety of the public as the very first priority.

That is what the American public demands, and that is what it deserves.

Public trust does not come easily, but it is the foundation for any successful public policy or program. The NRC, the industry and all of us interested in nuclear power have the responsibility of earning and maintaining that trust.

Nuclear power issues appear in many complex forms, and I look forward to working with you on the many different manifestations that you as a member of the NRC and I as a member of this Committee will face in the future.

STATEMENT OF

LANDO W. ZECH, JR.

Mr. Chairman and members of the Committee:

I appreciate the opportunity to appear before this distinguished Committee as President Reagan's nominee to be a member of the United States Nuclear Regulatory Commission. As this Committee knows, I have been serving as a Commissioner in a recess appointment since July 5, 1984.

For over 39 years, I was privileged to serve my country as a commissioned officer in the U. S. Navy. During these years, I served as the commanding officer of four submarines, including the nuclear submarine USS Nautilus and the fleet ballistic missile submarine USS John Adams. My shore assignments included tours as: the Navy's Deputy Chief of Legislative Affairs; the Commandant of the Thirteenth Naval District during the period of construction of the fleet ballistic missile submarine base at Bangor, Washington; the Chief of Naval Technical Training; Commander, U.S. Naval Forces, Japan; and as the Chief of Naval Personnel and Deputy Chief of Naval Operations for Manpower, Personnel and Training. I retired from the U. S. Navy as a Vice Admiral in October 1983.

The experience from these assignments, in my judgment, has given me some of the background and insight needed to assist the Commission in carrying out its important and challenging responsibilities. My primary motivation for accepting this demanding assignment, outside of the great honor of receiving a Presidential appointment, is the opportunity it presents to further serve my country. Since assuming office, I have given my responsibilities as a Commissioner my full attention and energy. If the Senate sees fit to confirm my nomination, I will continue to do my best.

It is my personal judgment that safe nuclear power is an important part of our nation's energy needs now and in the future. I am dedicated to the national policy objective, set forth in the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act, that the commercial use of nuclear power be pursued with assurance that the public health and safety is protected. I believe that is the primary reason for the existence of the Nuclear Regulatory Commission (NRC). I believe that the quality of the NRC's performance has much to do with the public confidence in nuclear energy and its future role in helping to meet our nation's energy needs.

The NRC as a regulator does not act alone as the protector of the public health and safety; its licensees have the primary responsibility to conduct their activities in a manner which assures the protection of the public health and safety. I believe the NRC as well as the licensees and their officials must demonstrate a dedication to quality and to excellence.

Mr. Chairman, members of the Committee, I believe that the key to safe and reliable commercial nuclear energy is trained and dedicated people. People design our nuclear plants, people build them, people operate them, people maintain them, people manage them, and people regulate them. I believe in a business-like approach with formality, discipline, and attention-to-detail in all aspects of nuclear energy.

As the NRC interfaces with industry, I see the role of the NRC as one which should encourage excellence, demand compliance, provide cooperative assistance when possible, and exercise prompt, tough enforcement when warranted.

I am well aware of the significant challenges which face the NRC and the nuclear industry. I do believe that nuclear energy can be provided safely and reliably and that it can make a significant contribution to our energy needs. If confirmed, I look forward to the opportunity to work closely with my colleagues on the Commission and with members of the Congress in carrying out the important elements of our national nuclear policy.

Vice Admiral Lando W. Zech, Jr.
U. S. Navy (Retired)
5918 Merritt Place
Falls Church, Virginia 22041
(703)820-3235

OBJECTIVE: A management position that will use extensive executive and technical experience as a career naval officer.

EXPERIENCE: Thirty-nine years of commissioned service in U.S. Navy. Retired as Vice Admiral on October 1, 1983.

For information purposes, a detailed service biography, prepared for last change of command and retirement ceremony, is attached.

Highlights of Navy career are as follows:

-Operational assignments included both surface and submarine duty. Submarine commands included experimental-high-speed USS ALBACORE, nuclear submarine USS NAUTILUS and fleet ballistic missile nuclear submarine USS JOHN ADAMS. Surface ship duty included command of guided missile cruiser USS SPRINGFIELD.

Operational tours included fleet operations and deployments in both Atlantic and Pacific areas.

Additionally, commanding officer responsibilities included the first overhaul of a nuclear powered ship, NAUTILUS, and commissioning of a fleet ballistic missile nuclear submarine, JOHN ADAMS.

-Shore assignments included Secretary of Navy's Office of Program Appraisal, Deputy Chief of Legislative Affairs, Deputy Commander Navy Recruiting Command (all in Washington, D.C.), Commandant Thirteenth Naval District (Seattle, Washington), Chief of Naval Technical Training (Memphis, Tennessee), Commander of U.S. Naval Forces Japan (Yokosuka, Japan), and Deputy Chief of Naval Operations (Manpower, Personnel and Training) and Chief of Naval Personnel (Washington, D. C.).

-As Deputy Chief of Naval Operations (Manpower, Personnel and Training) and Chief of Naval Personnel was responsible for planning and programming to meet Navy's manpower requirements, supervision and execution of a budget of 11 billion dollars, as well as the assignment of all Navy personnel to duty stations.

These responsibilities included planning for and making decisions on Navy's future manpower requirements and for determining the personnel policies, programs and budget to meet those requirements. Carrying out these responsibilities

involved defending these decisions, programs and policies within the Navy Department, the Department of Defense and during Congressional testimony. Finally, duties included supervising the execution of those approved programs and policies to provide the Navy with trained and motivated manpower within the budget authorized.

EDUCATION: U.S. Naval Academy, Bachelor of Science, 1944. (Born: June 29, 1923).

Submarine School, nuclear power training, fleet ballistic missile and surface missile training.

Graduated from:

Armed Forces Staff College, 1958.
National War College, 1968.
George Washington University, Master of Science,
(International Affairs) 1971.

Lando William Zech, Jr., was born in Astoria, Oregon, on June 29, 1923, son of Dr. Lando W. and Mae (Monroe) Zech. He attended Roosevelt High School and Lakeside School in Seattle, Washington, prior to entering the U. S. Naval Academy. Graduated with the Class of 1945 on June 7, 1944, he was commissioned Ensign and subsequently advanced in rank to that of Vice Admiral on August 1, 1980.

After graduation from the Naval Academy, he joined USS JOHN D HENLEY (DD-553) and then had duty aboard USS HENRY W. TUCKER (DD-875) after which he took Submarine School, New London, Connecticut. From June 1948 he served in USS FLYING FISH (SS-229) and from January 1951 to June 1952 in USS BACKFIN (SS-322).

In June 1952 he served in the Executive Department at the Naval Academy until June 1954, then was assigned as Executive Officer of USS IREX (SS-482). He assumed command of USS SEA ROBIN (SS-407) in January 1956 and of USS ALBACORE (AGSS-569) in January 1957. In July 1958 he completed the Armed Forces Staff College, Norfolk, Virginia, and then had instruction in the Division of Naval Reactors, Atomic Energy Commission, Washington, D. C.

In June 1959, he took command of USS NAUTILUS (SSN-571), the first nuclear powered ship. Subsequently, he commanded USS JOHN ADAMS (SSBN-620) from 1962 to 1965. From May 1965 to Juy 1967, he headed the Submarine Assignment Section of the Bureau of Naval Personnel after attending the National War College, Washington, D. C. He assumed command of USS SPRINGFIELD (CLG-7), flagship of Commander SECOND Fleet in July 1968.

In February 1970, he reported for duty in the Secretary of the Navy's Office of Program Appraisal. He was subsequently assigned as Deputy Chief of Legislative Affairs, Navy Department. From June 1972 until June 1974, he served as Deputy Commander of the Navy Recruiting Command during which he was selected for Flag Rank. He then assumed the duties of Commandant THIRTEENTH Naval District, at Seattle, Washington. In June 1976, he became the Chief of Naval Technical Training at Memphis, Tennessee. From August 1978, until assuming his present duties as Deputy Chief of Naval Operations for Manpower, Personnel and Training/Chief of Naval Personnel in July 1980, he served as Commander, U. S. Naval Forces Japan.

In addition to the Distinguished Service Medal, two Legion of Merit awards and the Navy Commendation Medal, he has the American Defense Service medal, American Campaign Medal, Asiatic-Pacific Campaign Medal with four operation stars, World War II Victory Medal, Navy Occupation Service Medal, Asia Clasp, China Service Medal, National Defense Service Medal with bronze star, Korean Service Medal, United National Service Medal, and the Philippine Liberation Ribbon. He also has the Japanese Second Class Order of the Sacred Treasure, the Philippine Presidential Unit Citation and the Korean Presidential Unit Citation.

Vice Admiral Zech is married to the former Josephine M. Kerr of Bristol, Rhode Island, and they have five daughters: Janet M. of Richmond, Virginia; Joanne N. of New York, New York; Nancy J. of Wayne, Pennsylvania; Carol M. of Washington, D. C. and Patricia L. of Seattle, Washington.

General

1. Worked closely with the Chairman and the other Commissioners to achieve the benefits of the collegial process.

2. Participated in Commission meetings, discussions and votes since swearing in on July 5, 1984.

3. Conducted orientation and get acquainted visits with practically all of the NRC's staff.

4. Visited and inspected 15 nuclear reactor plant sites, giving priority to those plants coming up for licensing decisions.

5. Visited several regional offices.

Votes: Licensing

1. Did not vote on August 10, 1984 on the Diablo Canyon full-power license solely because time available since swearing in as a Commissioner on July 5, 1984 did not allow me, to my satisfaction, to review thoroughly the extensive record.

2. Voted to allow full power operation of the Grand Gulf and Callaway plants.

3. Voted to allow fuel load and cold criticality testing of the Shoreham plant.

4. Support moving steadily in the direction of making a decision on whether to lift the suspension of TMI-1 operation.

5. Voted against taking action to shut down the plants at Indian Point.

6. Voted that the August 1982 staff issuance concerning San Onofre, Unit 1 was a suspension order, thus providing procedural guidance to the staff for use in its consideration of a restart authorization.

7. Voted to allow the staff to follow normal procedures for issuance of a low-power license for Waterford, Unit 3.

Votes: Rulemaking

1. Voted to postpone and then to disapprove a proposed rule which in my judgment was an overly prescriptive policy to the goal of increasing engineering expertise on shift. Supported instead a policy statement which accomplishes that goal in a way which properly balances the basic safety concerns involved and the practical realities of the nuclear industry's human resources pool.

2. Support changes to ex parte/separation of functions rules as follows:

   ° Reflect the requirements of existing statutory law.

   ° No change should establish a "wall" in licensing (as distinguished from enforcement) within the agency's technical staff or between that staff and the people on the outside with whom the staff must communicate in order to carry out NRC's licensing and regulatory responsibilities.

   ° Clarify, with maximum precision, the type of Commission-level communication with the agency's technical staff which is prohibited.

   ° The system should provide for the Commission to know, or to ascertain readily, on a current basis exactly what issues in on-going proceedings are within the category of prohibited communications with its technical staff.

° The rules should provide for the procedures to be followed in the event a Commissioner decides that communicating with the agency's technical staff is necessary to carry out his statutory responsibilities both as an adjudicator and as a Commissioner.

3. Supported a policy statement on late allegations and to establish in the regulations criteria for reopening of records.

4. Supported a change, proposed by the staff, which would expand on the standards for granting exemptions from the regulations in 10 CFR Part 50 for nuclear facilities.

5. Supported administrative procedural reforms to the Rules of Practice which would provide better focus to and discipline in the control of contested licensing hearings, consistent with statutory requirements.

6. Voted to support the proposed rule on decommissioning criteria.

7. Voted to approve a severe accident policy which concluded that the requirements are adequate for present plants but kept open the option to make improvements when justified.

8. Anticipated Transients Without Scram (ATWS) - voted not to require Westinghouse plants to install a Diverse Scram System in addition to the ATWS Mitigating System Actuation Circuitry (AMSAC) due to the response of these plants in an ATWS event.

9. Approved final rule on hydrogen control.

10. Voted to initiate generic rulemaking on the effects of earthquakes on emergency planning.

11. Voted in favor of the final rule on financial qualifications.

12. Voted in favor of the final rule on the environmental qualifications of electrical equipment.

13. Voted to not impose steam generator generic requirements because they did not significantly improve plant safety.

14. Approved proposal rule amending 10 CFR Part 55 and a policy statement concerning the training and qualifications of nuclear power plant personnel.

15. Voted to preserve NRC regulatory authority, unless legally compelled to do otherwise, in the proposed rules on uranium mill tailings which have been published for comment.

Enforcement

1. Support the resident inspector program.

2. Support a revised definition of material false statements to include only falsifications which are deliberately made or which are made with complete disregard of the accuracy of the statement.

3. Support strong enforcement action when warranted by the circumstances.

Other Matters

1. Support a budget which requires the most effective use of available resources.

2. Advocate of a five-year budgetary projection which focuses on changes expected in the agency's work, including the maintenance of CADRE functions.

3. Advocate of a policy which provides regulatory impetus for standardization of the complete plant.

4. Supporter of training and operator re-qualification programs.

5. Support efforts to make the licensing process more predictable and to reduce the procedural complexities in the present system, consistent with statutory requirements.

6. Disapproved the initiative to have the staff investigate a voluntary pilot designated representative program.

7. Advocate early involvement of the Commissioners on the development of the budget.

8. Advocate the annual establishment of priority tasks for the staff to accomplish, including specific directions on unresolved safety issues.

9. Advocated a focusing of our investigatory efforts on matters of significance to our regulatory responsibility.

10. Advocate Commissioners' consideration of how the job can be done better.

11. Supported clarifications in existing procedures and regulations on such things as the interpretation of regulations, the effects of remands, and the legal effects of certain types of regulatory actions.

12. Advocate furnishing support to our staff when they are faced with possible adversity resulting from their good faith efforts to perform their duties.

13. Advocate strong cooperative industry agency roles to strive for excellence in certain important areas and to achieve regulatory objectives, without compromising our regulatory authority to act when necessary and our ultimate regulatory responsibility. (e.g., with INPO/NUMARC.)

14. Encourage top management involvement and vigilance to assure excellence in construction and operational quality.

15. Advocate review of adequacy of regulatory efforts in nuclear materials licensing areas not related to nuclear power reactors.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

February 7, 1985

The Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are my responses to questions which members of your Committee submitted for the record as a part of its consideration of my nomination by the President to be a member of the United States Nuclear Regulatory Commission.

Sincerely,

Lando W. Zech, Jr.

cc: The Honorable Lloyd Bentsen

QUESTIONS SUBMITTED FOR THE RECORD
SENATOR ALAN K. SIMPSON

Question 1. What are your views on the collegial Commission structure as an effective, efficient body for the regulation of commercial nuclear power? What legislative or administrative changes, if any, would you recommend to improve the regulation of commercial nuclear power? Would you support a single administrator to replace the current collegial structure?

Answer

Now that I have been part of the Commission for approximately seven months, I have a better feel for the pros and cons of the Commission style form of organization as opposed to that of a single administrator.

Regarding the Commission, I have concluded that the Commission style organization can work. I know that it has many critics and that much of the criticism may be well-founded. Trying to set policy and provide administrative guidance as a group is not easy. It is an awkward, ponderous and often frustrating business. The nature of the process provides abundant opportunity for delay, inaction, disagreement, miscommunication, indecisiveness, and misunderstanding of what is really occurring. However, such problems are not unique to a Commission; they simply are of somewhat greater significance. I believe that the extent to which these problems are or are not controlled depends upon the Commissioners themselves. My sense is that better control is not an impossible undertaking. In

fact, I believe we have seen improvement during the recent months.

I have suggested to my colleagues that we spend some time on the issue of improving Commissioner-level operations. I believe we will soon be discussing a number of other ways we can improve Commission discipline without dampening the benefit of individual Commissioner views and initiatives. I think more progress can be made in this area.

The value of a Commission, as I see it, is to bring together diverse views and thereby provide a variety of value judgments, particularly to societal-type issues. The Atomic Energy Commission and now the Nuclear Regulatory Commission have been acting with the Commission concept for over thirty years. It is my view that most societal-type issues have been decided and are imbedded in NRC statutes, rules, regulations and policies. Most of the decisions are now more in the technical area. Therefore, it is perhaps the right time to consider a change from the Commission organization to that of a single Administrator.

Without question, a strong administrator could provide more efficient administration. Authority, responsibility and accountability would be focused. This is a compelling argument in favor of such a change which I would support. However, in

the meantime, my intention is to devote my energy towards being the most effective Commissioner that I can possibly be.

As regards legislative or administrative changes, I support legislation which would assist in a movement toward standardized nuclear power plant and balance of plant designs. I believe that this would simplify, to some extent at the very least, our process, while continuing to provide for public participation and a publicly visible licensing and regulatory process.

In my judgment, such designs would enhance safety for future plants. There would be fewer different types of designs to review, regulate and to operate. Consequently, standardized programs of construction and quality control should be encouraged, and training, maintenance and operation improved.

I believe that, consistent with our statutory authority to do so, we should move ahead with necessary administrative changes which would improve the process for review and approval of standardized designs. I am also trying to have the agency's ex parte rule and its application reexamined. Of course, I am against improper ex parte communications in adjudicatory proceedings. But I am not satisfied with unreasonable communication barriers between Commissioners and the agency's technical staff. I have been encouraging efforts to have this area

carefully reexamined and will continue to do so until I am convinced that we are without authority to do something about the problem. Similarly, I am not convinced that the agency's definition of "meeting" for purposes of the Sunshine Act need be as broad as it has been interpreted and applied. I support the objectives of the Sunshine Act. However, our interpretation and application of it, in my judgment, establishes restrictions which unnecessarily impair the collegial process, even for preliminary, informal discussion by a quorum of Commissioners where no other official agency business is conducted.

Question 2. Please provide your views on the issues discussed and the recommendations made in a letter from Chairman Nunzio J. Palladino to Congressman Tom Bevill, dated January 23, 1985.

Answer.

In the Chairman's letter to Congressman Bevill of January 23, 1985, he covers a number of important issues. One of these regards whether or not a single administrator form of management would be preferable to the present Commission form. My views on this subject are in the answer to question 1.

Regarding the possible change to a three-member Commission from the present five-member Commission, I agree with the Chairman that such a change does not appear to resolve any of the major problems we have with the present NRC.

As to the difficulty the Chairman finds in getting the Commission to adopt his positions, I believe there are many reasons for this difficulty. Most of the reasons, in my view, are basic to the give and take of the collegial process. On the other hand, we are dealing with complex and controversial issues.

The Chairman has indicated that some Commissioners believe they should be involved in the budget development process since they must approve it at a later date. I am one of the Commissioners who have expressed that view to the Chairman. It is my opinion that if I and my fellow Commissioners are in fact involved in

the development of the budget proposal, the difficulties in reaching consensus and the ability to do so quickly and efficiently would be improved, rather than hindered. My view in this matter is that if Commissioners are to make decisions on such matters we have to be fully informed in order to do so, otherwise there is little point in our being involved at all.

I happen to agree with the Chairman that individual Commissioners should curb their independence on matters dealing with the Chairman's efforts to exercise his authorities under the Reorganization Plan of 1980, in terms of his serving as the official spokesperson, and in terms of his being singly responsible for the day-to-day operation of the NRC. However, under the collegial process, I separate the oversight of day-to-day operation from the fundamental policy responsibility that the Commissioners exercise. While I believe the Chairman should in fact be responsible for the day-to-day operation and that any Commissioner views regarding those operations should be presented to the Chairman for discussion with the EDO and staff, I also believe that major issues such as budget, senior personnel appointments, overall organizational structure and possibly others, are in fact of such significant impact on the overall policy of the NRC, that they are legitimate and appropriate areas for the Commission itself to look at under the Commission's fundamental policy responsibility. I do believe though that, even in these matters, the other Commissioners should be always mindful of the Chairman's special responsibilities.

Not having been in the Chairman's role, it is a little difficult for me to comment on whether or not the Reorganization Plan of 1980 has provided an adequate amount of authority for the Chairman. He clearly does not believe so and apparently his study group agrees with him. However, my short tenure on the Commission indicates to me that there still may be room for much improvement, given some changes in the operation amongst the Commissioners.

Question 3. What are your views regarding the production of electricity from nuclear reactors, versus electricity production from coal, natural gas, oil, and other sources?

Answer.

I believe that nuclear energy is one of the important energy supply sources of this nation and should be a significant part of the nation's energy mix. I feel the production of electricity from nuclear power is an option that must be preserved for our country. It is an option that is consistent and complementary to the determination of Congress that the use of nuclear energy for peaceful purposes is a legitimate and important national goal. With the projected growth of electrical demand during the next decade, I believe we need to coordinate our resources to develop a plan to meet the forthcoming energy needs. Each potential source of electricity has its recognized, associated risks that must be evaluated. Coal and gas involve environmental problems; oil, a dependence on foreign countries; geothermal and solar have limited capacity; and nuclear involves cost, construction time, and potential accident considerations. Each source has a role in our energy mix and each must be utilized. In my view, my role as a Commissioner is to help preserve the nuclear option within the energy mix by insuring that its use poses no undue risk to the public health and safety.

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Question 4. What is your assessment of the safety of nuclear power in this country? Where do you believe there are weaknesses, and what areas hold the greatest potential for improved safety?

Answer.

The U.S. civilian nuclear industry has an exemplary record of overall safety. The record shows that there has been no loss of life as a direct result of the operation of the 84 operational nuclear power plants or the 80 non-power nuclear reactors licensed today. The industrial safety record at nuclear plants is also exemplary. Many of the power plant construction projects have set records for the number of lost time accident-free hours worked, as have some operating plants. The industry has established goals that emphasize public and personnel safety.

I believe that our nuclear plants are being operated safely. Nevertheless, I believe there are some weaknesses that should be addressed. I believe that the greatest potential improvement for safety can result from increased management involvement in plant operation. Quality control, quality assurance, early identification and resolution of problems, follow-up of corrective actions, and attention to detail are a few of the areas that can be improved through management attention.

To achieve this degree of involvement, I believe that every utility Chief Executive Officer must commit to excellence and transmit that commitment through his entire organization, from his president to his housekeeping crews. Once committed, a utility should communicate its standards and demand that those

standards be met. Management's standards should be supported with the necessary financial and personnel resources. To ensure its standards are met, I believe utilities should continually evaluate themselves to identify areas in need of improvement. Double checking should become routine and personnel should be made to feel that improvement is a management and personal goal. Discipline and formality should be emphasized. Plants that have shown improvement (e.g., Brunswick) should be studied and the management techniques and efforts shown successful to create the improvement should be disseminated and applied. Lastly, utilities need to be more willing to evaluate themselves and ask for help.

Improving plant performance however is not just an industry responsibility. I believe the NRC and the Commissioners themselves need to become more involved. Maybe the regions and headquarters need to counsel and better train the resident inspectors so they are more aware of where they should be applying attention. Increased usage of Systematic Analysis of Licensee Performance (SALP) ratings might be an avenue we can use to address priority areas. Regional meetings with upper management of all utilities together for a frank assessment of our views of how each plant is performing is a possibility. Regardless of the mechanism, I am convinced the agency can help plants recognize the need to improve management involvement in a constructive manner.

Question 5. What are your views on the past management and direction of the NRC research program, and on ways to improve the management of the program in order to direct the program towards areas that have the greatest potential for safety improvement?

Answer.

I am informed that the NRC is the only government agency conducting nuclear safety research in the U.S. Confirmatory nuclear safety research is the legislatively mandated responsibility of the NRC. As such I believe the NRC should continue to conduct the necessary research to enhance the assurance of public health and safety in the field of nuclear energy. In my judgment, the research should be applications oriented and address unresolved safety issues and higher priority generic safety issues. The research should support the needs of the Offices of Nuclear Reactor Regulation, Inspection and Enforcement and Nuclear Material Safety and Safeguards. It should provide for investigations to assess the feasibility and effectiveness of safety improvements, and to enhance our understanding of the analytical methods needed to characterize phenomena as needed for regulatory activities.

The emphasis should be on research results applicable to the regulatory process, assigning the highest priority to light water reactor safety. Additional efforts in research should support the agency's ability to evaluate safety characteristics of new reactor types and definition of the licensing basis for standardized plants.

Question 6. What are your views on the responsibility and capability of those involved in the nuclear industry to undertake a greater share of the research activities currently undertaken by the Commission?

Answer.

As stated in the answer to question number 5, the issues addressed through NRC research activities have a generic or broad industry application. The industry has only one "research" organization that would look at generic issues. The Electric Power Research Institute (EPRI) is, as it has for more than 10 years, conducting research in safety issues as its resources allow. EPRI conducts many research projects for its sponsoring industry, only part of which, however, is nuclear-related. Where EPRI has pursued an issue of nuclear safety significance the NRC has monitored, participated in and shared the benefits of the work. Coordination with EPRI continues to minimize duplication of efforts.

It is, in my opinion, the responsibility of each utility, the utility sponsored vendor owners groups, the utility institutions, such as EPRI and the Institute of Nuclear Power Operations (INPO), and the other industry-based organizations, Atomic Industrial Forum, American Nuclear Society, Edison Electric Institute, for example, to continue to pursue safety research to the extent needed to ensure safe effective operation, maintenance, construction and design of nuclear plants.

I am not informed adequately to express a judgment on their capability to undertake a greater share of the research. Certainly research associated with standardized plant designs will have to be conducted by the industry. Similarly, so will any major research efforts which may be needed to improve the reliability of plants.

Resources should be applied in such a manner that the needed research gets completed and the results shared through the industry to maximize to the extent practical the completion of important safety research.

Question 7. What do you believe the Commission's role should be in responding to a nuclear powerplant accident? Under what circumstances, if at all, should the Commission actually direct the operation of a nuclear plant?

Answer

In one respect, the role of the NRC in responding to a nuclear power plant accident is not any different from its role during normal operation. We are still tasked with the statutory responsibility to protect the health and safety of the public and to preserve environmental quality. During an emergency, the public or the environment may be threatened and the NRC must, to the best of its ability, be prepared to respond quickly. The NRC, however, is only one member of a response team and its role must be examined in relation to a set of parallel responsibilities with the licensee, the state, and other Federal agencies.

The licensee is, at all times, responsible for mitigating the consequences of the accident. He is assigned and has accepted the primary responsibility of taking appropriate plant-specific actions and making plant-specific recommendations as well as advising offsite officials whether or not to implement suggested actions. As such, the licensee must perform the essential technical activities to protect the public in the event of an accident at their facility.

The NRC must be ready to support and assist the licensee by (1) monitoring the accident to be ready to advise the licensee based on NRC's assessment of the plant situation, and by (2) locating and obtaining needed expertise and equipment. Both the NRC and the licensee must be prepared to cooperate in all their activities with local, state, and Federal agencies (e.g., FEMA, FBI, DOT). Additionally, the NRC is responsible for providing (to the Governors of affected states) any Federal recommendations for actions to protect the public.

To fulfill its function, the NRC will staff its Operations Center in Bethesda upon notification of an emergency. Once the NRC Response Center is activated, and until our regional response team arrives at the site and is designated to be in charge of the agency functions, the normal role for the Operations Center will be to monitor, inform and, upon request, advise licensees and other local, state, and Federal authorities. The NRC, however, is limited in its ability to provide detailed recommendations during these early phases. Our ability increases once the site team has assumed primary responsibility for the agency.

In any incident, the NRC will monitor the situation and increase its involvement, as necessary, as the incident develops. This involvement could progress from a monitoring-only role to one of informing, advising, and ultimately issuing, in a limited manner, orders as the situation warrants. I cannot, however, now foresee a situation where the agency would (consistent with Section 186c. of the Atomic Energy Act of 1954, as amended) revoke a license to operate and itself operate the plant.

Question 8. Since the Three Mile Island accident, both the Commission and the Congress have been studying the information needs of the agency in an emergency. One concept that is under study is the Nuclear Data Link to automatically provide information from each operating reactor to NRC headquarters. What are your thoughts on the need for a Nuclear Data Link?

Answer

Nuclear Data Link (NDL) is a term that was applied to a proposed, completely automatic and continuous electronic transmission data system between each licensee and the NRC Operations Center. Three Mile Island motivated the agency to develop the proposal due to the difficulty it experienced during that event obtaining timely, reliable, and accurate data. Although the NDL proposal offered a means to receive timely data with a high degree of accuracy, reliability, and completeness without human interfaces, there were a number of associated disadvantages. High implementation costs, extensive backfitting requirements, and the potential for the NDL to degrade plant instrumentation and consequently affect safety were the major reasons Congress repeatedly but appropriately rejected requests to allow NDL to proceed.

Congress later directed the NRC to analyze other data acquisition options in the FY84-85 Authorization Act. The results of that study recommended a significantly modified version of the NDL and is called the Emergency Response Data System (ERDS). Although the system requires some human interface, accuracy, reliability, timeliness, and completeness are excellent. The ERDS system has relatively low cost, requires minimal

backfitting, employs electronic transmission, and taps into the plant system at locations that do not affect instrumentation. The Commission is currently considering asking the Congress for approval to proceed with ERDS.

I should point out that the need for a reliable, accurate data acquisition system is immediate and crucial. It is my understanding, after speaking to the staff, various members of the incident response team, and industry observers that our current voice transmission -- and sometimes telecopy -- data acquisition methods introduce so many errors that our ability to fulfill our proper functions during an emergency is severely limited. If we are to be capable of rendering judgments or proposing recommendations during an event, the agency needs reliable, timely, and accurate information. I am informed our present capability to receive that type of information is questionable.

Question 9. The NRC now plays a major role in the review and approval of nuclear exports. Is this an area where you believe the NRC should continue its present licensing role, or should licensing responsibility be transferred to the Executive Branch in this area? To what extent, if at all, do the Commission's nuclear export licensing responsibilities detract from the Commission's ability to discharge its domestic nuclear safety responsibilities?

Answer

Yes, I believe the NRC's licensing role in export cases is a legitimate one. I believe the NRC can make a contribution due to its nuclear expertise and familiarity with and control over domestic safeguards policy in the commercial arena.

I have seen no evidence that would indicate that fulfilling our export responsibilities has any impact, one way or the other, on the Commission's ability to discharge its domestic responsibilities.

Question 10. What are your views on the appropriate role for the Environmental Protection Agency (EPA) in establishing "generally applicable environmental standards for the protection of the general environment from radioactive materials," pursuant to Reorganization Plan No. 3 of 1970? Does this authority, as defined in Reorganization Plan No. 3 of 1970, also set the limits, in your judgment, for EPA's authority under section 275b. of the Atomic Energy Act of 1954, as amended?

Answer

It is my understanding that EPA has the responsibility, under current law, for establishing generally applicable environmental standards, to be applied outside the boundary of an activity licensed by the NRC, for the protection of the general environment from radioactive materials. EPA provides the ambient radiation standards for the general environment. The NRC has the statutory responsibility and expertise to assure that the site-specific activities which are under NRC's licensing and regulatory jurisdiction meet NRC's detailed licensing requirements and regulatory standards.

Obviously, close coordination is required between the two agencies to assure that their distinct, but complementary, functions are carried out without any unnecessary overlap and in an orderly manner which preserves the respective jurisdictions of the two agencies. I believe that this general approach would apply in any of our respective areas of responsibility unless the Congress has clearly indicated otherwise. I do not believe that Congress has so indicated in section 275b. of the Atomic Energy Act of 1954, as amended.

Question 11. To what extent, if any, may licensees propose--and the NRC approve--alternatives to specific requirements adopted by the Commission and by EPA pursuant to section 275b. of the Atomic Energy Act of 1954, as amended? What standard would you apply in approving such alternatives? What authority, if any, does EPA have, in your judgment, to evaluate and approve such alternatives?

Answer

Licensees may propose any alternatives to the regulations they deem appropriate. The standard which applies appears to be the one set forth in section 84c. of the Atomic Energy Act of 1954, as amended. NRC may approve such alternatives if it determines that they will achieve a level of stabilization and containment of the sites concerned and a level of protection for public health, safety, and the environment which is equivalent to the extent practicable, or more stringent than the level which would be achieved under the regulations. I am not aware of any authority which EPA has to separately evaluate and approve such alternatives. In my opinion, any suggested alternatives would clearly involve NRC responsibilities and judgments. This position is consistent with the statement on the Commission's authority in the notice of proposed rulemaking on uranium mill tailings. I supported that statement in the proposed rule.

Question 12. Has EPA, in your judgment, exceeded its authority under this provision in establishing the standards promulgated on October 7, 1983 at 48 Federal Register 45926?

Answer

Whether or not the EPA exceeded its authority is a question to be resolved by the judiciary and I am informed that litigation is now pending. I approach the basic issue from the standpoint of NRC's regulatory authority. This agency has the basic responsibility and expertise to prescribe and enforce site-specific regulatory requirements in order to protect the public health and safety from radioactive materials which are under its jurisdiction. I do not believe that this basic responsibility and expertise should be eroded, given away voluntarily, or shared unless any of these actions are explicitly authorized or required by the Congress. To the extent that any regulation promulgated by another agency overlaps the NRC's specific licensing and regulatory authority I believe that a question is raised whether such action by another agency has infringed on the NRC's jurisdiction. I believe that in such circumstances it is important for us to work closely with the other agency to try and reach a reasonable accommodation which does not give away our existing statutory authority and responsibility.

Question 13. What are your views on the authority of the Commission under section 1006(a) of the Solid Waste Disposal Act, regarding the application of requirements of that Act to activities or facilities within the jurisdiction of the Commission? Which agency, in your judgment, should be responsible for this provision regarding whether the "application (or regulations) is not inconsistent with the requirements of such Acts"?

Answer

I believe that the basic statutory authority by which the Commission must be guided in the area of the protection of the public health and safety from radioactive materials is found in the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. The guiding principle which I would follow until I am convinced otherwise (either by a statute, an appellate judicial decision or an authoritative legal opinion) is that the NRC must exercise its judgment consistent with its statutory responsibilities and duties in these two Acts. The authority in section 1006(a) of the Solid Waste Disposal Act, 42 U.S.C. 6905(a), explicitly recognizes that it does not apply to source, byproduct, or special nuclear material which are licensed under the Atomic Energy Act of 1954. Therefore, it is my belief that the standard for application is that the SWDA would not be inconsistent with the requirements of the Atomic Energy Act.

I believe that the determination of "inconsistency" would be made by the agency with principal regulatory responsibility for the activity involved. For radioactive materials covered by the Atomic Energy Act of 1954, it is my judgment that the NRC would make the "inconsistency" determination. Thus, I believe the language of section 1006 supports the views I have expressed regarding NRC's licensing and regulatory authority.

Question 14. What are your views on the technical studies currently underway regarding the "source term" issue? If such studies conclude that past Commission assumptions concerning the postulated "source term" are overly conservative and that these assumptions, in turn, have served as the basis for NRC regulatory actions, would you support a concentrated and comprehensive effort to reexamine those regulatory actions and to establish procedures and deadlines for resolving this issue? What priority would you attach to this initiative?

Answer.

I have not, as yet, drawn any conclusions regarding the source term studies even though there have been efforts completed by an American Nuclear Society special committee and a technical study resulting from the industry degraded core rulemaking (IDCOR) program.

A report of the staff's assessment and conclusion concerning the current source term calculational methodology (NUREG-0956) is scheduled for publication for public comment on May 24, 1985, following a Commission meeting about May 15, 1985. The current calculational methodology is presented in a report of work performed mainly at Battelle Columbus Laboratories, BMI-2104, "Radionuclide Release Under Specific LWR Accident Conditions."

This calculational methodology has undergone several steps of peer review including a current review by the American Physical Society. This formal review of the underlying scientific bases

for the methodology is nearing completion, and a Commission briefing is presently scheduled for February 21, 1985.

Clearly, I believe it is an important regulatory issue to study source terms if, in fact, past Commission assumptions need modification. If, as some presently believe, our past assumptions have been overly conservative, then we should, indeed, must reexamine those aspects of our regulations which are based on such conservatism and, where warranted, consider modifications more reflective of reality.

At this point in the staff's assessment (which is still in progress), it appears that the new source term methodology might be best useable: (1) as a basis for best estimates of actual releases during a plant emergency response; (2) as a basis for determining the range of possible consequences for emergency response planning; (3) as background information for assessing regulatory requirements, backfits, and priorities; and (4) for background information for Commission policy decisions.

I have not yet reached a judgment on these studies and am awaiting the staff's conclusions and recommendations. I can assure you, however, if the conclusions are along the lines as set forth in your question, that I would strongly support a concentrated and comprehensive effort, with reasonable deadlines and procedures, to resolve this issue. I would attach a high priority to this issue, second only, as things now stand (i.e. with some allowances for the unforeseeable), to the priority which must be given to the safety of operating plants.

Question 15. What are your views on the extent to which, if any, the Commission may consider costs in making safety decisions under the Atomic Energy Act of 1954, as amended?

Answer

The basic statutory safety standards contained in the Atomic Energy Act, such as "adequate protection" and "no unreasonable risk" must be met and may not be compromised or traded off against economic or other factors and considerations, including national energy policy. However, having said this, the Commission has considerable flexibility in its consideration and treatment of costs in its decisionmaking processes.

Conceptually, the extent to which the Commission may consider costs could be viewed as follows: NRC's primary responsibility under the Atomic Energy Act is to assure adequate safety. But, having achieved a fundamental level of safety, there is a band or spectrum for fixing the desired level of safety. It is over this spectrum that cost considerations may reasonably influence Commission decisions as long as the precise level of safety selected as a decision point is clearly within minimum acceptable bounds.

Consistent with the foregoing, I believe that the Commission can make itself aware of what the economic impact of a potential decision will be. I believe that the Commission has done this in the past. For instance, since 1976 the Commission has

supported the use of regulatory value impact statements. These analyses weigh, quantitatively to the extent practicable, the health and safety benefits against agency and licensee costs.

Under the National Environmental Policy Act (NEPA), the Commission must consider all relevant environmental impacts associated with the proposed agency actions. This of course includes economic and environmental costs as well as benefits which are analyzed and contained in the environmental impact statements.

Question 16. What are your views on the extent to which, if any, the Commission may consider costs prior to the imposition of new or additional regulatory requirements on NRC licensees?

Answer

I do not believe that cost considerations regarding backfitting are any different than consideration of other costs in safety decisions. Therefore, please see my response to question 15.

Question 17. Please describe your views on the "backfitting" of nuclear power plants. Has the Commission, in the past, imposed backfits in a disciplined and effective fashion, with due consideration of the public health and safety, the overall safety of plant operation, and the costs of such backfits? What changes, if any, are necessary or appropriate to ensure that the necessary attention is devoted to these matters by the Commission? Do you support such changes?

Answer

Based on my review of the NRC's past practice of backfitting, I have reached the following conclusions. Probably most telling is the lack of information available regarding either the rationale for backfitting actions or the costs of such backfits. In other words, the NRC is unable to document what backfits occurred over a long period of time, why they were put in place, or what their costs were. Given the lack of information about those specific backfits, it does not seem to me possible to make much more specific statements about the appropriateness or safety effectiveness of specific decisions.

However, I feel strongly that these are important policy decisions that frequently have significant safety impacts and certainly have had significant cost impacts, both monetarily and in terms of complexity of regulation and ability to manage other important aspects of nuclear power plant operation. Without speaking to the appropriateness of the specific decisions, I believe that it is clear that the backfitting process has not been disciplined and that it is not possible to determine how effective the agency's backfitting policy has been. Given that, I believe it is appropriate to place additional

discipline on that process. I believe decisions in the backfitting area have been made at too low a level in the organization without appropriate management review.

It is my understanding that the agency has already, to some extent, corrected this problem. I have supported and continue to support changes in this direction. While I believe the principal responsibility in this area resides with the EDO and Chairman, in terms of day-to-day oversight, I do believe that given the significance of the backfitting problem, both in terms of breadth and length of time, that it is an appropriate area for the Commission to maintain policy oversight in the future and I support such oversight. I also support our efforts at rulemaking which would provide a more formal modification to the process and additional stability for any future backfitting.

Question 18. What are your views on the following provisions of the Atomic Energy Act of 1954, as amended:

(1) "The development, use and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security." (Section 1a.)

(2) "The development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise." (Section 1b.)

Answer

In my judgment, these stautory provisions capture the essence of the national nuclear energy policy which the Congress has established and subsequently maintained in the Atomic Energy Act of 1954, as amended. The creation of the Nuclear Regulatory Commission in 1975 did not affect these provisions. The national policy was maintained. Although NRC's basic mission is to license and to regulate, and not to promote, this overall national policy for the commercial use of nuclear energy should be recognized as an established policy. That policy should not be debated in our proceedings and no one should be apologetic that our mission should be considered in that broader context of national nuclear energy policy. In all events, of course, the NRC must carry out its licensing and regulatory mission to provide reasonable assurance of no undue risk to the public health and safety.

Question 19. What are your views on the recommendations contained in NUREG-0957, "The Price-Anderson Act--The Third Decade"?

Answer

I believe that a basic objective of the Price Anderson Act to provide an established system and process for the compensation of the public in the unlikely event of a nuclear accident is meritorious and that it should be preserved. At the same time, I also agree that careful attention need be given to whether there should be an increase in the limit of liability and, if so, what that limit should be. In my judgment, the Commission's recommendations in NUREG-0957 (which were developed prior to the commencement of my term as a Commissioner), provide innovative approaches which I believe should be carefully considered along with the other approaches in the Congressional consideration of the extension of the Price-Anderson Act. I support the objectives of that Act. I still have an open mind on what approach is preferred to deal with the limit of liability matter.

Question 20. What are your views on the Commission's responsibilities for implementation of the Nuclear Waste Policy Act of 1982? What are your views on the responsibilities of the Commission vis a vis the Department of Energy on (1) matters of public health and safety, and (2) environmental matters? What actions, if any, would you support to eliminate unnecessary duplication of responsibilities?

Answer.

Much of the necessary groundwork needed to solve the nation's nuclear waste problem has already been accomplished by the Congress and others. DOE has made real progress in its site characterization efforts. We at the NRC have kept pace in developing the information and procedural machinery necessary to fulfill our licensing responsibility in this area. I firmly support the NRC policy of efficient and effective licensing activities--with an eye to doing all we can not to unnecessarily delay the completion of this very important national project. In that respect, I have come to support what I would call the more literal or focused view of NRC responsibilities as provided by the Nuclear Waste Policy Act (NWPA). That is, we at the NRC should assure ourselves that DOE, as potential licensee of a repository, meets our safety and environmental criteria, and that the NRC approval process provides the necessary opportunity for state, Indian tribe and public input. DOE has the responsibility for making the fundamental decisions on site selection, and those choices should be theirs.

It is my judgment that we should not attempt to duplicate or overlap unnecessarily with the environmental work which DOE has done under the NWPA, especially where we have the discretion not to do so. I think that the Waste Act indicates that the NRC can, if it wishes, rely on DOE's environmental analyses within reasonable limits. We should continue to work closely with DOE. Although close coordination is required, it should not be allowed to detract in any way from NRC's independent responsibility as the licensing and regulatory agency for the repository.

Question 21. Based upon your experience at the Commission to date, are there additional efficiencies that can be achieved in the operation of the Commission, with corresponding budgetary savings? Please identify these areas, if any, in which such savings can, in your judgment, be achieved.

Answer

I believe additional efficiencies can be realized at the NRC. I am on record for developing a long range plan that would envision an NRC that operates with some lesser number of personnel over the next five years. I am confident that a physical consolidation of the NRC headquarters offices can result in considerable administrative savings and also significant improvement in intangibles that would have a positive effect on agency efficiency. From an efficiency standpoint, consolidation of our headquarters offices should have a very high priority.

I also believe some consolidation of functions, such as our two legal offices and two investigative offices, could result in improved efficiencies.

QUESTION 22. Please explain your view as to the obligations of the Commission pursuant to section 102(c) of Public Law 98-553, authorizing appropriations to the Nuclear Regulatory Commission for fiscal years 1984 and 1985. Under what circumstances would the Commission be obliged to report to the authorizing committees prior to reprogramming funds under this provision? What reprogramming actions are required, pursuant to this provision, to adjust the levels of funding authorized in P.L. 98-553 to the levels reflected in the Commission's current revised base for fiscal year 1985? In the hypothetical event that the Congress authorizes and appropriates the exact total amount requested by the Commission for a given fiscal year, but modifies the funding levels requested by the Commission for individual program offices by amounts exceeding $500,000, is the Commission under an obligation to advise the authorizing committees of its intent to reprogram funds pursuant to this provision if the Commission wishes to allocate funds to these individual program offices in accordance with the Commission's initial request?

Answer

At the outset, let me make it clear that my tenure, thus far, has not enabled me to review the history of the reprogramming requirements applicable to NRC and to become familiar with any problems which may have been encountered. I can assure you, however, that I am keenly aware of the need for us to follow a disciplined approach to assure that the Congressional intent is carried out in our expenditure of funds which the Congress has authorized and appropriated. If problems are encountered in this area, I would suggest and encourage our appropriate staffs to get together to work out an acceptable solution to reprogramming issues which may not be clearly answered by the literal wording of section 102(c) of Public Law 98-553. I can assure you that I would support efforts to resolve any existing problems in this area. As far as the existing language of section 102(c) is concerned, I understand it to cover with considerable certainty NRC contemplated actions to move funds from one program to another if the amount exceeds $500,000.

Question 23. What are your views on the Commission's current efforts to "regionalize" certain NRC functions and employees?

Answer

My previous experience indicates to me that effective organizations decentralize implementation while maintaining centralized control.

I support the NRC's regionalization efforts. The results of regionalization have been positive. Regional Administrators have become NRC representatives, responsible for a larger amount of NRC's activities in their regions than they formerly had as directors of only inspection programs. Benefits of decentralized operations have been achieved. For example, moving the authority structure for many regulatory decisions to the regions has placed it with those who have extensive knowledge of licensees' operations in several areas of NRC's responsibility. The regions have become more of a focal point in the NRC's interaction with licensees because more programs are now implemented by the regions. The increase in numbers of regional personnel has also increased the technical capability of each region. This has enabled each Administrator to respond to exigent demands of events and safety problems with more confidence and to be more innovative in implementing regional programs.

As with any decentralized operation, assuring consistency in the way that programs are implemented in different regions is always a concern. Evaluations of regional operations by headquarters program offices have shown reasonable consistency among regions. Although examples of apparent inconsistency crop up from time to time, continuing efforts of regions and program offices have enhanced open communication, exchanges of information, program guidance and feedback to correct inconsistency and limit variances among regions.

Question 24. Are the "hybrid hearing" procedures that are set forth in section 134 of the Nuclear Waste Policy Act (P.L. 97-425) mandatory or discretionary, in your judgment?

Answer

My understanding is that these proceedings are discretionary with the parties in those licensing situations where section 134 would permit a "hybrid hearing." If a party properly requests such a hearing, I believe that use of the hybrid hearing procedures would be mandatory.

QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR GEORGE J. MITCHELL

Question 1. Please describe what role you played in the Commission's deliberations on Diablo Canyon other than the closed/public meetings. Did you discuss the matter with the other members of the Commission? Did you or your staff edit draft copies of the draft full power order?

Answer

None. I did not discuss Diablo Canyon full power license matters with any other member of the Commission other than during the Commission meetings. Neither I nor my staff reviewed or edited draft copies of the draft full power order.

Question 2. Did you notify the other Commissioners prior to the August 2 meeting that you were not going to vote on the Diablo Canyon license? If not, why not?

Answer

No. I did not make up my mind not to vote on the full power license matter until the time came to vote. (See the answer to question 3 for an elaboration.)

Question 3. Do you believe it is appropriate for a Commissioner to take part in Commission proceedings but refrain from voting?

Answer

As far as my participation in the Diablo Canyon proceeding is concerned, I do not believe there was anything improper. There was no reason for me to have recused myself from participation either in the proceeding or the vote. To prepare myself, I reviewed as much of the extensive record as I could, I visited the site and I participated in the Commission meetings. When the time came to cast my vote on the Diablo Canyon licensing, I decided not to participate in the vote. The reasons for my decision are set forth in my explanatory statement which was as follows:

> The history of the licensing of the Diablo Canyon Nuclear Power Plant is complex and protracted. The record of the proceeding is voluminous. I have reviewed a considerable part of the record. I have visited the Diablo Canyon plant. I have talked to the utility management personnel, including some of the operators. However, the time available to me as a Commissioner has simply not been sufficient for me to satisfy myself that I have read, analyzed, and adequately reflected upon all the relevant material. If my vote were needed, either yea or nay, I believe I would need several more weeks before I could come to a decision. Therefore, I have concluded that I cannot vote today on the full power license decision for Diablo Canyon.

I did participate in the discussion and voted on the separate discrete issue of whether to initiate a rulemaking proceeding on the generic issue of the extent to which earthquakes should be considered in emergency planning.

Question 4. Please provide your thoughts on the NRC's procedures for resolving generic safety issues. In your response, please comment on the General Accounting Office's September 1984 report (GAO/RCED-84-149) on the NRC's handling of generic safety issues.

Answer.

I agree with the essence of the GAO report. We must try and do a better job. It is my impression that the GAO report did not identify any gross deficiencies in the way issues are resolved, and all of the GAO recommendations have been or are nearly implemented.

The agency has identified a number of safety issues over the period since its formation. As nuclear technology has matured, other safety issues have been identified both through increased analytical sophistication and as a result of operational experience. The agency has a procedure for identifying, prioritizing, tracking and closing safety issues. In some cases the safety issues are upgraded, through screening, to the status of Unresolved Safety Issues (USIs). These USIs are assigned a project manager whose principal task is to organize and manage the necessary resources to resolve the issue. Often this entails safety research, testing and the results may lead to rulemaking. Lower priority safety issues, generic in applications, are prioritized and are allocated resources commensurate with the priority assigned. The lowest priority generic safety issues are not worked until the resources become available due to closure being reached on higher priority activities.

Some of the lowest priority safety issues do get upgraded if operating experience or a review of the issue suggests that it has greater safety significance than initially assigned.

The agency should continue to resolve the significant generic safety issues in an orderly manner. I believe a mechanism should be developed and implemented to screen and eliminate generic safety issues of low safety significance. Following completion of the work on the source term and on the safety goal, the agency will have an operational screen to reject all of the generic issues that make marginal or no safety improvements beyond the safety goal. I would hope we pursue completion of this work aggressively.

Question 5. How have you viewed the subject of generic safety issues as a Commissioner? In your response, please make reference to specific issues that you have addressed as a Commissioner.

Answer.

I have considered the subject and have examined the existing list but not in any great depth. I had several immediate reactions. First, I thought that we should consider establishing better priorities and get the higher priority items resolved with reasonable promptness. I want to ensure that if an issue is important enough to be placed on the list that the list doesn't simply become an excuse for inaction. Second, I have inquired to varying degrees on the plant-specific solutions to the problem pending the resolution of the generic issue. In essence, I want to insist on having the generic issue matter carefully managed so that prompt attention is given to priority items.

Question 6. Critics of the NRC suggest that labeling problems as generic safety issues may provide the NRC a convenient method of postponing decisions on difficult licensing question. Obviously, a general public perception along that line would seriously undercut public confidence in the Commission's performance. How would you address such an accusation?

Answer.

If such an accusation had any credible basis of which I was aware, I would insist on prompt corrective action. Even though there is a sound basis for handling a safety issue generically, the mere fact that there is a category of unresolved safety issues does not instill public confidence in the process. Even though an issue is handled generically, we must continue to assure that the specific issue is being dealt with in an acceptable manner in operating plants. Since this has to be done, there should be no real incentive for postponing decisions on difficult licensing questions. Rulemaking, I understand, is an established method to deal with generic issues.

Question 7. On what basis have you reached the conclusion that the present process needs to be changed? Please provide me details of any instance you are aware of where the NRC hearing process has delayed a nuclear power plant's operation.

Answer

During my tenure as a Commissioner, I have not conducted any specific inquiry which would lead to the conclusion that the present process needs to be changed. Neither am I aware of any specific instance during my tenure when the NRC hearing process has unnecessarily delayed a nuclear power plant's operation.

At the commencement of my term, the Commission was in the process of considering procedural changes which a Regulatory Reform Task Force had produced. Thereafter, consideration was also given to the possible need for additional licensing legislation. I understand that over the years many of those who have participated in the present process either as an applicant or as an intervenor have expressed views on the need for improvements. My relatively short experience to date leaves me with the belief that the procedural complexity of the process should be reduced if reasonable ways can be found to do so. Let me make it clear, however, that while I join in the search to find a less complex process, I recognize that we must do so consistent with statutory requirements. Moreover, changes in the process would have to be fair to all of the interests which could be affected. The process has to continue to be an open one. The system should not discourage an interested person from participating. When there is a legitimate dispute, I would support formal procedures to resolve it. But to the extent possible, my personal judgment is that a less complex and less formal process warrants careful consideration when appropriate.

Question 8. How is the present system "unpredictable"?

Answer.

As I stated in my remarks before the Subcommittee, I believe the fact that each of our plants is different has had a large influence on creating a licensing system of extreme complexity and unpredictability. The licensing system would not have required frequent change if standardized plants were in place.

Another ingredient of "unpredictability" is the complex procedural process. It appears difficult, certainly in a complex contested licensing case, to know what will happen or to be able to predict with some confidence when the process will finally end with a decision one way or the other.

The NRC's backfitting policy has also created unpredictability. No utility who would undertake construction of a nuclear power plant could count on the regulatory system remaining stable during construction or after the start of operation. While such change may have been desirable, it has created what has been called an unpredictable regulatory policy, one that has complicated the business of building and operating nuclear power plants. I believe a more disciplined backfitting policy would contribute to predictability.

Question 9. There have been no new utility orders for nuclear power reactors in the past five years while approximately 50 utility ordered plants have been cancelled. What evidence do you have that enactment of legislation changing the present licensing process and providing impetus for plant standardization would lead to new plant orders?

Answer

I have no such evidence and have not conducted any specific inquiry to produce any. I do not believe that it is our function to change our system simply for the purpose of stimulating new plant orders. If the present system is perceived to be deficient, I believe it should be revised to correct the deficiencies to the extent that we can do so, and, of course, the revisions must provide for a system which is open and fair.

It is my judgment that emphasis on standardized plants would have significant benefits both from the long-term safety standpoint and also as regards the procedural process part of the system. I believe that these improvements can be made to the system and that it is entirely compatible with our mission to do so. These improvements may or may not lead to new plant orders. However, I believe it is entirely possible that the present arcane and cumbersome system could well serve to discourage new plant orders. Further, I believe that a system which focuses on complete standardized plant designs would simply bring more discipline to plant operations, maintenance, management as well as regulation, and very likely result in a significant contribution to safety of nuclear plant operations.

Question 10. Do you favor abolishing the NRC staff's role as a full party in licensing hearings?

Answer.

I do not at the present time. I have not heard any arguments which convince me that doing so would be beneficial from either the standpoint of improving either the effectiveness or the efficiency of the system. However, my mind is still open and I would be receptive to any convincing arguments on the subject.

Question 11. Do you favor the establishment, in regulation, of criteria for reopening issues in licensing proceedings? Please provide in detail the reasons for your position and an explanation of the criteria you would favor.

Answer.

The issue has only come up in the context of criteria for reopening an evidentiary record which has been closed. I understand that for many years the agency has had such criteria in its administrative decisions in individual licensing cases. These criteria are: (1) The motion must be timely, except that an exceptionally grave issue may be considered at the discretion of the presiding officer even if it is untimely presented; (2) it must address a significant safety or environmental issue; and (3) it must be shown that a different result might have been reached had the newly proffered material been considered initially.

Recently, in connection with the publication of a policy statement on late allegations, it was suggested that the reopening criteria be published in the regulations so that there would be no uncertainty as to what the rules required. The proposed rule also gave additional guidance on the manner and degree of documentation required to support a motion to reopen. This covered such things as a proposal to require that motions to reopen be accompanied by affidavits setting forth with particularity the basis for the claim; each issue would have to be separately identified. Finally, allegations based on information from anonymous informants would be acceptable only if the informant were identified to the presiding officer and a request for an appropriate protective order is filed.

I supported the proposed rule which has been published for public comments.

Question 12. Do you favor changes in the present hearing format? Please provide in detail, the reasons for your position and the changes you would favor.

Answer.

The Commission is currently considering a number of changes which have been developed by a Regulatory Reform Task Force. These changes have not yet been published as proposed rules for public comment. I will await the receipt and evaluation of these comments before I make a final judgment on any specific proposal. I have reached no judgment on changes to the hearing format itself.

Question 13. You favor "focusing of NRC investigatory efforts on matters of significance to our regulatory responsibility." Please explain what you mean by that. In your response, provide details and examples of where present investigative efforts are misdirected.

Answer

In stating that I favor "focusing of NRC investigatory efforts on matters of significance to our regulatory responsibility," I was referring to a policy question which has arisen and which the Commission has agreed to consider regarding the overall threshold at which the NRC's investigatory program should be brought to bear. I believe strongly that the agency's investigative group must use its own professional judgment in pursuing investigations, in reaching conclusions regarding its efforts, and it should be free to forthrightly communicate its findings on these matters. However, safety significance should be the key criterion and that judgment must be shared with others.

There has been a recent example of a request by the Office of Investigations to investigate a matter that, in my judgment, has little bearing on the NRC's regulatory responsibilities regarding safety. OI understood this was a matter of judgment and one which the Commission rightly should set the agenda on.

Another example in which there is some policy question as to where the NRC investigative efforts are appropriately focused regards the extent and the amount of NRC resources that are placed at the disposal of the Department of Justice to aid them

in efforts regarding criminal matters. NRC's mission is concerned primarily with safety matters from a civil perspective, with appropriate referrals of possible criminal violations to the Department of Justice. This is consistent with the statutory provisions in the Atomic Energy Act of 1954, as amended. The use of our available resources regarding these two important functions is a matter which I, again, believe requires Commission attention or, as I have called it, "focusing."

Question 14. You are aware of the present federal grand juries which include in the scope of their proceedings NRC licensing or regulatory activities. Please discuss whether or not the present level of grand jury activity indicates any failure on the part of the Commission to perform its responsibilities. (It is not necessary in your response to make reference to any specific proceeding.)

Answer.

Understandably, I am not presently aware of any of the specific circumstances concerning any grand jury activity. So I will have to respond in general terms.

As far as NRC employees are concerned, my judgment is that they are competent, honest and dedicated, and are trying to do their job. I have confidence in them. I intend to support them as much as I can. If in a specific case any employee is found to have acted improperly that would be unfortunate and regrettable for the individual involved and for the agency. To my knowledge, that has not occurred. Even assuming that it did occur, on the basis of my present judgment, I would continue to have confidence in the competence and integrity of the great majority of our staff.

To the extent that licensee employees are implicated in or convicted of improper activities, that too, is unfortunate. I also believe, however, that the vast majority of our licensees and their employees are similarly competent, dedicated, and honest. We are all human. Some human failures will occur. We can't regulate ethics or morality or instill a sense of what is

right and what is wrong. We can and will strive to do our job better. But human failures of the type indicated by your question occur in every other sector of our society, and while regretted in our business, I do not believe that their occurrence indicates a failure on the part of the Commission to perform its responsibilities.

In any event, I note that the Commission does have an Office of Investigations, whose role is to deal with such matters to the best of its ability.

Question 15. What role should a utility's financial condition play in the Commission's consideration of safety questions?

Answer.

I supported the Commission's final financial qualifications rule which states that, at the operating license stage, rate regulations provide reasonable assurance that there will be funds sufficient for safe operation by regulated electric utilities of a commercial nuclear power reactor. The rule preserves the requirement for financial review and findings for electric utilities that are applying for construction permits for such reactors. The rule also preserves the flexibility for the consideration of financial qualifications in any particular case where special circumstances appear to justify such a review on our part. If a utility's financial condition appears to be questionable or unsettled, my position, consonant with the flexibility we have under the final rule, is that we should be vigilant to assure that the condition does not adversely affect either the safe construction or the safe operation of the nuclear plant.

Question 16. Do you favor the inclusion of cost-benefit analysis in the Commission's deliberations?

Answer.

The basic statutory safety standards contained in the Atomic Energy Act, such as "adequate protection" and "no unreasonable risk" must be met and may not be compromised or traded off against economic or other factors and considerations, including national energy policy. However having said this, the Commission has considerable flexibility in its consideration and treatment of costs in its decisionmaking processes.

Conceptually, the extent to which the Commission may consider costs could be viewed as follows: NRC's primary responsibility under the Atomic Energy Act is to assure adequate safety. But, having achieved a fundamental level of safety, there is a band or spectrum for fixing the desired level of safety. It is over this spectrum that cost considerations may reasonably influence Commission decisions as long as the precise level of safety selected as a decision point is clearly within minimum acceptable bounds.

Consistent with the foregoing, I believe that the Commission can make itself aware of what the economic impact of a potential decision will be. I believe that the Commission has done this in the past. For instance, since 1976 the Commission has

supported the use of regulatory value impact statements. These analyses weigh, quantitatively to the extent practicable, the health and safety benefits against agency and licensee costs.

Under the National Environmental Policy Act (NEPA), the Commission must consider all relevant environmental impacts associated with the proposed agency actions. This of course includes economic and environmental costs as well as benefits which are analyzed and contained in the environmental impact statements.

QUESTIONS SUBMITTED FOR THE RECORD
SENATOR DANIEL P. MOYNIHAN

Question 1. Would you consider the views of the State of New York in making your decision on the licensing of the Shoreham Nuclear Power Plant?

Answer

I can assure you that, consistent with my statutory duties, I will consider the views of the State of New York which are included in the record of the Shoreham nuclear power plant operating licensing proceeding.